

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3717 of 1985

Date of decision: 25-7-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GIRISHCHANDRA C BHATT

Versus

GUJARAT MARITIME BOARD  
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Appearance:

MR S.M. Mazgaonkar for Petitioner  
MR SUNIL K SHAH for Respondent No. 1  
SERVED for Respondent No. 2  
DELETED for Respondent No. 3  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/07/97

#### ORAL JUDGEMENT

The petitioner has filed this special civil application praying for quashing and setting aside the appointment of Shri B. S. Bhalala to the post of Deputy Executive Engineer and for direction to the respondents to make promotion to the said post from the cadre of Additional Assistant Engineers as qualified candidates are available from that cadre, until the ratio laid down by the statutory recruitment rules is reached.

2. The petitioner was appointed on the post of Supervisor vide order dated 20-9-1973 passed by the Director of Ports, Gujarat State, Ahmedabad, which post he joined on 12th February, 1974. In the seniority list which has been published on 16th January, 1980 name of the petitioner was there at serial No.3 in the category of Supervisors. Under the Directorate of Ports there were three types of posts, namely, Junior Engineer, Supervisor and Overseer. The post of Junior Engineer and Supervisor were later on designated as Assistant Engineer and Additional Assistant Engineer respectively. From these three feeder cadres promotion is provided to the post of Deputy Engineer in the ratio of 7:4:1, subject to the fulfillment of eligibility criteria including experience of 3 years for Junior Engineers, 8 years for Supervisors and 13 years for Overseers. The post of Deputy Engineer was redesignated as Deputy Executive Engineer.

3. Under Resolution dated 26-10-1976 statutory rules for promotion to the post of Deputy Executive Engineers, known as " Deputy Engineer (Civil ) (Ports Organisation) Recruitment Rules, 1978 " were framed. The criterion for promotion was proved merit and efficiency. However, under the aforesaid Rules ratio for promotion has been maintained as it was there under the Government Resolution dated 10th October, 1974.

4. Under order dated 10th February, 1982 Shri B. S. Bhalala, Assistant Engineer (Civil) was promoted on adhoc basis to the post of Deputy Executive Engineer. The petitioner made grievance against the said promotion by making representation. On 5th April, 1982 Maritime Board was established under Gujarat Act No.30 of 1981. The petitioner contended that as per the provisions of section 20(f) of the said Act, the petitioner became the employee of the Board and the service conditions which

were there under the Directorate of Ports were maintained. The grievance of the petitioner is that the ratio of promotion 7:4:1 has been broken. At page 6 of the special civil application the petitioner has given out details how the quota has been exceeded. As per the details, four Junior Engineers (now Assistant Engineer) were promoted in excess; and there was shortfall of seven in the cadre of Additional Asst. Engineer (Supervisor). However, despite filing representation nothing has been done. Hence the petitioner has approached this Court by filing this special civil application.

5. In the reply to the special civil application the respondents have come up with the case that many of the harbour projects were discontinued and as such many posts were rendered surplus. It has further been contended in the reply that the Board has not made any promotion to the post of Deputy Executive Engineer (Civil). So far as the promotion of Shri B.S. Bhalala is concerned, the respondent Board stated that it was only urgent, temporary promotion and at that time the petitioner was not eligible for promotion and hence the petitioner has no case whatsoever in his favour.

6. Learned counsel for the petitioner raised only contention that the ratio as laid down for promotion to the post of Deputy Engineer (now Deputy Executive Engineer) has not been maintained by the Board. It has further been contended that the service conditions of the petitioner, on his absorption, by legal fiction are to be protected and the ratio of promotion to the next higher post from the feeder cadre of Additional Asst. Engineer is the service condition.

7. On the other hand the counsel for the respondent contended that the petitioner has no case whatsoever on merits. The petitioner has not given out the details of those persons who have been promoted in excess of the quota of promotion. Moreover, the petitioner has very conveniently avoided mention of the years in which excess quota promotion has been made from the category of Assistant Engineer. Eligibility for promotion has been acquired by the petitioner only on 12th February, 1982 and as such whatever promotion has been made in excess of the quota from the category of Assistant Engineers earlier to that date cannot be compared by the petitioner. Carrying this contention further the counsel for the respondents contended that in case eligible candidates are not available for promotion in the category of Additional Assistant Engineer, then the Government could have called upon another category of

Assistant Engineers for promotion. It is not the case of the petitioner in the petition that at the time when excess promotions were given from the category of Assistant Engineer sufficient number of eligible candidates in the category of Additional Assistant Engineers were available. So far as Bhalala's promotion is concerned, the counsel for the respondents contended that it was purely urgent and temporary promotion and the petitioner on that date was not eligible for promotion.

8. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. As the petitioner has advanced only one argument, I do not consider it necessary to go into all the objections raised by the counsel for the respondents. Ratio of promotion has been prescribed by the Government under resolution dated 10th October, 1974. For promotion to the post of Deputy Engineer (now Deputy Executive Engineer) from the feeder cadres of Junior Engineer (now Assistant Engineer), Supervisor (now Additional Asst. Engineer) and Overseer is 7:4:1. Statutory rules also prescribed same ratio for promotion to the post of Deputy Executive Engineer from the three feeder cadres. The Board is established under Gujarat Act No.30 of 1981. On 5th April, 1984 by legal fiction the petitioner has become an employee of the Board. Even if it is assumed that the service conditions as prevalent prior to the establishment of the Board are protected, still the question which does arise for consideration of this court is whether the ratio of promotion provided under the Resolutions and the Statutory Rules is a condition of service. Another question which arises for consideration of this Court is whether the Board still has to abide by the ratio as prescribed by the Government for promotion to the post of Deputy Executive Engineer, that is to say, after establishment of the Board the Board has no powers even to amend the service conditions of its employees.

9. Under resolution dated 10th October, 1974 and the statutory rules framed in the year 1978 the post of Deputy Engineer (now Deputy Executive Engineer) has to be filled in from the three feeder cadres at the ratio mentioned earlier. So it is a case of mere chance of promotion to the post of Deputy Engineer (now Deputy Executive Engineer). Mere chance of promotion of the petitioner cannot be said to be service condition. In this respect reference may have to be made to the decision of the apex court in the case of Chandra Gupta vs. Secretary, Govt. of India, reported in 1995 (1) SCC 23. In that case the apex court held that right of consideration for promotion is a service condition but

chance of promotion is not. Otherwise also it is open to the employer to unilaterally amend the service condition of employees. However, by doing so only thing to be taken into consideration is that whatever rights which have accrued in favour of the employees cannot be taken away by giving effect to the amended service conditions from retrospective date. In view of this legal position, the contention raised by the learned counsel for the petitioner is devoid of any substance. As regards the challenge to the promotion of Shri B. S. Bhalala as Deputy Executive Engineer is concerned, suffice it to say that the same is devoid of any substance. The day on which Shri B. S. Bhalala was promoted as Deputy Executive Engineer the petitioner was not eligible for promotion. However, the counsel for the petitioner contended that the petitioner was only lacking experience of three or four days. But the fact is that he was not eligible. Secondly, Shri Bhalala was given only adhoc promotion and this does not confer any right to the promotee. This petition has been filed by the petitioner in the year 1985 and though more than 12 years have passed it is not brought on record as to what ultimately happened in the case of promotion of Shri Bhalala. The petitioner and Shri Bhalala belong to different categories, i.e. Additional Assistant Engineer and Assistant Engineer which posts are not interchangeable. They are water tight compartments as it transpires from the record of this case. So the petitioner, other wise also, has no lis whatsoever against the promotion of Shri Bhalala on the post of Deputy Executive Engineer. Taking into consideration all these facts of the case I do not find any substance in this special civil application and the same is dismissed. Rule discharged. No order as to costs.

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